

Mr. Rock Owens
Assistant County Attorney
Office of Vince Ryan, Harris County Attorney
1019 Congress, 15th Floor
Houston, TX 77002-1700

Re: San Jacinto River Waste Pits Superfund Site, Harris County, Texas

Dear Mr. Owens:

Thank you for your letter dated April 2, 2014, and the information you have provided regarding the San Jacinto site. The Environmental Protection Agency ("EPA") has appreciated the contributions that Harris County has made regarding the investigation of the San Jacinto River Waste Pits Site, and it is very concerned that there is any question about the integrity of the information being provided by the potentially responsible parties ("PRPs") performing the Time Critical Removal Action ("TCRA") and the Remedial Investigation/Feasibility Study ("RI/FS") for the site. This work is being performed under administrative orders, with EPA oversight, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"). For the reasons described below, the EPA believes that the objectivity of the Superfund removal and remedy selection processes have not been compromised at the San Jacinto site, although your letter indicates that the EPA should consider further efforts to ensure that all parties are comfortable with the on-going EPA response at the site.

The PRPs at the San Jacinto site, like PRPs at many Superfund sites, clearly have a preferred method for addressing the site contamination, as evidenced in the e-mails attached to your letter. While CERCLA provides for PRP financing and performance of removals, site investigations, and remedial actions, the process also provides significant safeguards to prevent any undue influence or bias that might result on Agency actions or decision-making. For example, sampling is performed under the oversight of EPA or its representatives. At this site in particular, the EPA has entered into agreements with both Harris County and the Port of Houston so that these entities could provide comments on all draft technical documents, in addition to continued coordination with EPA's usual partner, the State of Texas. The draft plans and reports have been revised as necessary based on the comments received and issues identified by the various agencies.

As you hopefully are aware, the EPA collected and provided to the PRPs significant comments on the first draft of the site Feasibility Study; among many other comments, EPA made it clear that the PRPs could not identify a recommended remedial alternative in the Feasibility Study, and required the PRPs to provide a more balanced discussion of the different alternatives, as well as identifying additional alternatives for consideration. The Agency is now soliciting comments on the second draft of the Feasibility Study, with the goal of ensuring that the final document identifying and comparing site remedial alternatives is technically, and objectively, sound and well-supported by available information.

The EPA takes the lead on community relations activities for the site. I frankly was surprised at the comments in the e-mails attached to your letter regarding site community relations and Mr. Valmichael Leos, the EPA On-Scene Coordinator ("OSC") for the site TCRA (Mr. Gary Miller is the Remedial Project Manager or "RPM"). I do not know how familiar you are with Mr. Leos and his work on the site, but the perceptions described in the e-

mail are clearly ill-founded. Mr. Leos previously completed the final removal report drafted by the PRPs to ensure its conformance with EPA requirements and factual accuracy, as discussed further below, and recently has spear-headed the effort to re-work the temporary site cap pursuant to an investigation by the U.S. Corps of Engineers.

Regarding the conduct of community meetings, the EPA has held several such meetings to discuss site conditions and progress of the work. At these meetings, presentations have been made by EPA and/or other agencies (Texas Department of State Health Services, for example). The EPA is solely responsible for the content of its presentations and its answers to questions received.

While the PRPs may advocate for the removal action completed in 2011 to be a permanent remedy for the Site, the EPA consistently has made it very clear to all parties that the cap is not a permanent remedy, but only a temporary action to stabilize the pits and prevent releases until a permanent remedy can be selected and implemented. Following completion of the cap construction, the parties prepared a draft final removal report describing this work as a permanent remedy for the Site. EPA strongly objected to this wording and insisted that the work be described as a temporary action until a permanent remedy could be selected. The parties refused, and EPA decided to take over the completion of this final removal completion report and properly describe the project as temporary.

At the end of the RI/FS process, the EPA will select a protective remedy for the Site, in consultation with TCEQ, based on consideration of the nine CERCLA criteria as required by law. As part of the Superfund process, the EPA will consider comments from other governmental agencies and the public comments received, including comments from the private parties and community groups, regarding the site and cleanup approach. In addition, the EPA plans to consult with the Corps of Engineers and EPA's own technical personnel in Headquarters, as well as presenting its eventual recommended alternative to the EPA's National Remedy Review Board, which has a vast amount of knowledge and experience in cleaning up contaminated sites.

In summary, the PRPs do not control the data interpretation and conclusions of the Feasibility Study because of the active oversight of the EPA, TCEQ, Harris County, the Port of Houston, and the natural resource trustees, as well as our many community partners, and I sincerely dispute any aspersions cast upon Mr. Leos in the PRP e-mails attached to your letter. I hope that this letter helps to address any concerns that the e-mails may have caused, and the Agency will investigate whether further outreach is needed to address any misperceptions that may have resulted. Please feel free to call me at 214-665-2169 if you wish to discuss this matter further.

Sincerely yours,

Anne Foster
Office of Regional Counsel

cc:

6RC-S:FOSTER:sanj letter to rock owens

6SF-RA
Miller

6SF-RA
Sanchez

6RC-S
Peycke

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Meyer